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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1892

No. 685

THE STATE OF SOUTH CAROLINA, PETITIONER,

vs.

RAY BAILEY, alias RAY KEITH.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF NORTH CAROLINA AND BRIEF IN SUPPORT THEREOF.

JOHN M. DANIEL,
Attorney General,
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Asst. Attorney General,
J. INGRAHAM WILSON,
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Counsel,

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THE STATE OF SOUTH CAROLINA, PETITIONER,

vs.

RAY BAILEY, ALIAS RAY KEITH.

PETITION FOR WRIT OF CERTIORARI.

To the Honorables the Chief Justice and the Associate Justices of the Supreme Court of the United States:

The petition of the State of South Carolina would respectfully show to the Court:

The petitioner seeks the issuance of a writ of certiorari by this Court to the Supreme Court of the State of North Carolina, which is the highest court and court of last resort in that State, requiring that court to certify to this Court all of the proceedings in this case had in such court in order that this Court may examine such record for error or errors com-

plained of by the petitioner as contravening its rights under the Constitution of the United States.

The petitioner alleges that such record, a certified copy of which is attached to this petition as a part thereof, shows *inter alia* that the said Ray Bailey, being accused of the felonious crime of murder committed in the State of South Carolina, was arrested and held in custody in North Carolina under a warrant charging him with such crime; that in due form the Governor of South Carolina requested the Governor of North Carolina to surrender the fugitive accused to the proper authorities of the former State for trial; that the Governor of North Carolina duly approved such requisition and authorized the extradition of the accused; thereupon the accused secured a writ of *habeas corpus* from one of the Superior Court judges of North Carolina, thus staying extradition.

When such writ came on to be heard the regularity and validity of the extradition processes and proceedings were not questioned, but the accused through counsel set up a plea of *alibi* and demanded his discharge upon the ground that being *elsewhere* at the time he could not have committed the crime, and hence was not a fugitive from justice, subject to extradition.

Over the objection of the attorney general, who contended that upon the hearing of such writ only the regularity and validity of the extradition processes and proceedings could be reviewed, the Superior Court judge gave judgment discharging the accused.

Whereupon in due form the petitioner appealed from such judgment to the Supreme Court of North Carolina, who after hearing such appeal filed its opinion

and entered judgment in the case on the 26th day of October, 1932, affirming the judgment of the Superior Court, same being reported in — N. C., —; 166 Southeastern Rep., 165, and which decision is printed in the transcript of record herein.

For error or errors in said judgment the petitioner would respectfully show: That the statute of the State of North Carolina, designated as Section 2234 of Consolidated Statutes, in form and as construed and applied in the case at bar by the Supreme Court of that State contravenes Sec. 2, subd. 2, Article IV, of the Constitution of the United States, in that upon mere denial of guilt and upon contradicted proof of a plea of *alibi* the accused was discharged by writ of *habeas corpus*, whereas the court should have denied such writ and refused to discharge the accused thereunder, thus allowing extradition as the processes and procedure for extradition were admittedly regular and valid, and as the evidence of identity was at least contradictory, and in fact conclusively established the claim of petitioner that Bailey was the person who had committed the felony in South Carolina as charged.

The precise Federal question involved in this case and sought to be reviewed is:

1. Where the extradition processes and procedure are admittedly regular and the asylum State has approved extradition, can a court in the asylum State discharge the accused by writ of *habeas corpus?*

2. Where the extradition processes and procedure are admittedly regular and the asylum State has approved extradition, can a court in the asylum State

discharge under writ of *habeas corpus* where the accused felon merely denies his guilt and the evidence of identity offered is *contradictory,* or shows conclusively that the accused is the person who committed the felony in the demanding State?

Or expressed in another way: Is the statute of the State of North Carolina (Section 2234 of Consolidated Statutes), as construed and applied by the Supreme Court of that State, and insofar as such statute allows a judge of an intermediate court on hearing a writ of *habeas corpus* to absolutely discharge an accused felon whose extradition has been sought and allowed merely upon a denial of guilt and contradicted proof of an *alibi,* valid as against the petitioner whose right to extradite an accused felon when approved by the Governor of the asylum State is declared and protected by Section 2, subd. 2, Article IV, of the Constitution of the United States?

Or expressed in still another way: Can a State by statute, as in this case, empower its courts to discharge an accused felon, whose extradiction has been approved by the Governor of the asylum State, by writ of *habeas corpus* when the regularity and validity of the extradition processes and procedure are admitted, merely on contradictory and contested proof of identity when the right to extradiction is declared and protected to the demanding State by the Federal Constitution?

The State of South Carolina contends in this case that under the Federal Constitution the accused felon

must be delivered up and extradited when the Governor of the asylum State approves such extradition.

It is further claimed that when the extradition is approved by the Governor of the asylum State the only question that can be considered or determined by the courts of that State is whether or not the extradition processes and procedure are regular and valid on the face thereof.

At any rate, it is submitted that the courts of an asylum State cannot discharge an accused felon whose extradition has been approved by the Governor and where the processes and procedure are regular, upon merely contradictory proof of identity.

It is further submitted in this case that the proof on the hearing of the writ of *habeas corpus* conclusively establishes the identity of Bailey as the felon who committed the murder in South Carolina, and that to discharge him under the North Carolina statute constitutes a contravention of the rights of the State of South Carolina to have the accused felon extradited upon the authority of the Federal Constitution.

The Supreme Court of North Carolina has construed the cited statute of that State as giving the Superior Court judge power or authority on hearing a writ of *habeas corpus* to determine the identity and consequent guilt or innocence of the accused felon, all of which the petitioner contends contravenes its right of extradition protected by the Federal Constitution.

The record in this case, it is submitted, supports the following statement of facts:

On May 1st, 1932, one A. B. Hunt, a policeman of the city of Greenville, South Carolina, was killed with a pistol while in discharge of his duties in said city. The said Ray Bailey, *alias* Ray Keith, a citizen of the State of North Carolina, was accused of the murder, the authorities of South Carolina claiming that Bailey having come down from North Carolina to Greenville, South Carolina, and being surprised while engaged in an unlawful enterprise shot and killed Officer Hunt, and then fled back to North Carolina.

A warrant was duly issued for his arrest, and he was soon apprehended and held by the North Carolina officers for extradition to South Carolina to be tried for his crime.

The Governor of South Carolina issued extradition process for the return of Bailey for trial in South Carolina; and the Governor of North Carolina duly approved such extradition process and directed his surrender to the South Carolina authorities.

Thereupon, Bailey secured a writ of *habeas corpus* from Hon. Walter E. Moore, one of the Superior Court judges of North Carolina, who upon hearing the writ discharged Bailey from custody.

Three eyewitnesses to the homicide positively identified Bailey as the person who fired the fatal shot.

Besides, Bailey bore evidence of a pistol shot wound on his hand received in the affray.

Bailey denied the charge and produced several witnesses who testified that he was in Asheville, North Carolina, on the night of the shooting.

The judge decided that his plea of *alibi* had been sustained; that he was not a fugitive from justice; that no jury would convict him, and that he should not be required to undergo the expense of a trial in South Carolina.

The State of South Carolina duly appealed to the Supreme Court of the State of North Carolina from such judgment.

Such appeal coming on to be heard the judgment of the Superior Court was affirmed by the Supreme Court of North Carolina in its opinion filed on October 26th, 1932. See 166 S. E., page 165.

The petitioner now, within three months from the date of the filing of such decision, files its petition in the Supreme Court of the United States praying that a writ of *certiorari* issue to the Supreme Court of North Carolina, the highest court and court of last resort in that State, requiring the record in this case to be certified to this Court in order that such record may be examined to ascertain if the rights and privileges of the petitioner under the Federal Constitution have been contravened by the North Carolina statute as construed and applied by its Supreme Court.

In North Carolina appeal from the Superior to the Supreme Court is effected by writ of certiorari; and by reference to the petition of the State of South Carolina for such writ (R. 101) it will be seen that review and judgment was sought for all errors of law found in the record; so that in the court below the question that the North Carolina statute under review

as construed and applied by its Supreme Court was in conflict with the extradition clause in the Federal Constitution was fully and fairly made.

The right to extradite a fugitive felon is a Federal right, which may not be fettered by the statutory enactment or judicial decision of any State.

The North Carolina *habeas corpus* statute as construed and applied by its Supreme Court in this case constitutes an undue, arbitrary and unreasonable burden on the right of a sovereign State to have an accused felon extradited from a sister State with the approval of its Governor, in contravention of the extradition clause contained in the Federal Constitution as enlarged by the Act of Congress relative thereto.

The questions involved in this case are of grave public concern—can a felon be allowed to commit a murder in one State and flee to another and defy the extradition processes issued and approved by the Governors of both States by merely denying guilt and producing witnesses to testify that he was elsewhere when the crime was committed, the demanding State producing three eye witnesses who positively identified the accused, pointing to the gunshot wound on his hand as having been received at the time the officer was slain in South Carolina?

Accordingly, the State of South Carolina prays that this Court issue its writ of certiorari to the Supreme Court of the State of North Carolina, requiring the entire record of this case therein to be certified up in order that same may be examined for any alleged

errors therein, to the end that such errors, if any, may be corrected, and justice in that behalf done; and the petitioner will ever pray, etc.

Respectfully submitted,

THE STATE OF SOUTH CAROLINA,
Petitioner,
By JOHN M. DANIEL,
Attorney General;
J. IVEY HUMPHREY,
Asst. Attorney General;
J. INGRAM WILSON,
Asst. Attorney General;
J. G. LEATHERWOOD,
Solicitor;
QUEEN & BAILEY,
Attorneys for Petitioner.

WILLIAM C. WOLFE,
Counsel.

STATE OF SOUTH CAROLINA,
County of Richland:

Personally appeared before me John M. Daniel, who, being duly sworn, says: That he is the Attorney General of South Carolina; that, upon information and belief, the allegations contained in the foregoing petition are true; that such information is obtained from the various papers and records in the office of the Attorney general of South Carolina to which he has

access; and that he believes such statements in the petition to be true.

JOHN M. DANIEL.

Sworn to and subscribed before me this the 21st day of January, 1933.

JOHN F. MOORE [L. S.]
Notary Public, S. C.

My commission is at pleasure of the Governor.

BRIEF SUPPORTING PETITION.

The facts in the case are fully stated in the petition.

The right of a sovereign State to have an accused felon extradited for trial for a crime committed within its borders is a Federal right.

The extradition clause in the Federal Constitution constitutes a limitation upon the power of a State to enact any legislation burdening or fettering the right of extradition in any arbitrary or unreasonable manner.

Nor can the courts of any State so construe or apply its statute law as to unduly or unreasonably burden or impede the right of another State to have an accused felon extradited.

Such a statute would be unconstitutional and such a decision erroneous.

So in the instant case the *habeas corpus* statute of North Carolina as construed by its Supreme Court (and its construction of the statute law of its State must be accepted) gives judges of its superior (intermediate) courts the power on hearing a writ of *habeas corpus* in an extradition case to determine whether an accused felon is a fugitive from justice, which necessarily involves the question of guilt or innocence and the proof and trial of the plea of *alibi*, and to arbitrarily discharge even where the proof of identity is contradictory, or as in this case overwhelmingly against the accused.

We submit that the North Carolina statute which is brought in question in this case is unconstitutional as contravening the extradition clause in the Federal Constitution; and that the judgment of the Supreme Court of North Carolina upholding, construing and applying this statute, is erroneous, and should be reversed.

Sec. 2, subd. 2, Art. IV, of the Federal Constitution reads:

> "A person charged in any State with treason, felony, or other crime, who shall flee from justice, and be found in another State, shall, on demand of the executive authority of the State from which he fled, be delivered up, to be removed to the State having jurisdiction of the crime."

The Supreme Court of South Carolina long ago declared:

> "Section 2, subd. 2, Art. IV, of the Constitution constitutes the fundamental law on this subject of all the co-states. It is a part of the municipal law of each, and is to be obeyed, observed and respected by every citizen and officer."
>
> *State* v. *Anderson*, 1 Hill (S. C.) 228, 61 Am. Dec. 163.

Congress some years ago passed an Act defining the rights and powers of the several States in relation to the extradition of fugitive felons, which is found in the U. S. Code, Sec. 662, Chap. 20, Title 18:

> "The decisions of the Supreme Court of the United States upon the subject of extradition between States are binding upon all persons and upon all Courts."
>
> *Dennison* v. *Christian*, 101 N. W. (Neb.) 1045.
>
> *Munsey* v. *Clough*, 196 U. S. 364, 49 L. Ed. 515.

The extradition clause contained in the Federal Constitution, as construed and applied in the decisions of the United States Supreme Court constitutes the paramount law of the land in respect to that subject, and this principle also applies to the remedial writ of *habeas corpus* when applicable:

> "The technical sufficiency of the indictment and the question of the procedure under it are not open to inquiry on *habeas corpus* to review the issuance of a warrant of arrest in interstate extradition proceedings."
>
> *Munsey* v. *Clough, supra.*

> "But the court will not discharge a defendant arrested under the governor's warrant where there is merely contradictory evidence on the subject of presence in or absence from the state, as *habeas corpus* is not the proper proceeding to try the question of alibi, or any question as to the guilt or innocence of the accused."
>
> *Munsey* v. *Clough, supra.*

This Court has held

> "that if upon the return to the writ of *habeas corpus* it is clearly shown that the relator is

> not a fugitive from justice, and there is no evidence from which a contrary view can be entertained, the court will discharge the person from imprisonment, but that mere evidence of an alibi, or evidence that the person demanded was not in the state as alleged, would not justify his discharge, where there was some evidence on the other side, as *habeas corpus* was not the proper proceeding to try the question of the guilt or innocence of the accused."
>
> *Hyatt* v. *New York*, 188 U. S. 710, 47 L. Ed. 661.

Where there is merely contradictory evidence on the subject of presence in or absence from the State, *habeas corpus* is not the proper proceeding to try the question of alibi, or any question as to the guilt or innocence of the accused.

12 Ruling Case Law, page 1248.

The questions of alibi or guilt or innocence or any matter of defense is not allowed to be passed on in *habeas corpus* proceedings; and the question of identity, which includes that of whether the accused is a fugitive from justice, will not be determined on such proceedings if the evidence is contradictory.

29 *Corpus Juris*, 82.

In the case at bar the Supreme Court of North Carolina held, in effect and in substance, that under the North Carolina statute the judge of the Superior Court could determine the question of *alibi*, or the guilt or innocence of the accused, or any matter of defense, or the identity of the accused, or whether

he was a fugitive from justice, and discharge even though the evidence was contradictory or as here where the evidence was overwhelmingly against the accused; and that such determination of the Superior Court judge could not be reviewed by the Supreme Court because the statute in question vested such power and discretion exclusively in the Superior Court judge.

In deciding in this case that the accused was not a fugitive from justice the lower court necessarily held that he was *elsewhere* when the murder occurred, and was therefore innocent of the crime as charged.

The Consolidated Statutes of North Carolina, Sec. 2234, which relates to proceedings in *habeas corpus*, defines the duty of the judge and prescribes the scope of the hearing as follows:

> (*a*) "examine into the facts contained in such return, and into the cause of the confinement."
>
> (*b*) "And if issue be taken upon the material facts * * * or other facts are alleged to show that the imprisonment * * * is illegal."
>
> (*c*) "The * * * judge shall proceed, in a summary way, to hear the allegations and proofs on both sides."
>
> (*d*) "And * * * do what to justice appertains in delivering, bailing or remanding such party."
>
> *Ex parte Bailey*, 166 S. E. 166.

In its opinion in this case the court declares:

> "This court said *In re Veasey*, 196 N. C. 662, 146 S. E. 599, 601: 'One who is sought to be

extradited may contest the validity of the extradition proceedings on writ of *habeas corpus* by showing (1) that he is not charged with a crime in the demanding state, or (2) that he is not a fugitive from the justice of the demanding state. Both of these are jurisdictional matters, and, if the accused can establish either, he is entitled to be discharged from custody. The first is a question of law to be determined upon the face of the requisition and the indictment or affidavit accompanying it, the law of the demanding state, of course, furnishing the test; while the second is a question of fact, which, when controverted, may be established by evidence like any other disputed fact.' See, also, *In re Hubbard*, 201 N. C. 472, 160 S. E. 569. All the authorities, including the decisions of this state, are to the effect that it is not proper to hear evidence upon the guilt or innocence of the prisoner or to take into consideration the merits of the case or of the defenses to be interposed at the trial or of an alibi, or of other matters involving the ultimate issue of guilt. Nevertheless, these are general observations and legal assertions. If the petitioner was not in the demanding state when the crime was committed, certainly he would not be guilty of a crime, and hence it is obvious that the question of presence in the demanding state at the time of the crime involves in a certain sense guilt or innocence, *alibi*, or other defenses that may be interposed at the trial. It is apprehended, however, that the courts mean to say that the bald question of presence in the demanding state at the time of the commission of the alleged crime was the primary question to be considered."

In this case the Supreme Court of North Carolina further declares:

> "The statute of this state, C. S. #2234, enjoins the julge 'to do what to justice appertains in delivering, bailing or remanding such party.' Obviously, the statute does not undertake to limit the judge in arriving at his conclusions, but apparently commits the result to the exercise of his sound legal discretion. The nearest approach to a positive declaration of this court upon the quantum of proof is contained in *State* v. *Herndon*, 107 N. C. 934, 12 S. E. 268, 269. Upon the facts appearing in the record, the Court said: 'If the judge, upon the investigation of the evidence on a petition for *habeas corpus*, adjudges that there is or is not probable cause, and admits or refuses to admit to bail, no appeal or certiorari lies either in favor of the state or the petitioner. * * * The quantum of evidence, and the number of witnesses to be examined, must necessarily be left also to the sound discretion of the judge who hears the writ, and his action in that regard cannot be reviewed."

* * * * * * *

> "Exercising the power delegated by statute and supported in principle by the decisions of this state, the hearing judge found certain facts and set them forth in his judgment."

* * * * * * *

> "Whatever may be the variable conclusions reached by other courts, that inquiry is settled

in North Carolina. The law is thus stated: 'The findings of fact made by the judge of the superior court, found, as they are, upon competent evidence, are also conclusive on us * * *.'"

* * * * * * *

"It is true that the judge made certain remarks appearing in the record, tending to show that he was undertaking to view the case from the standpoint of guilt or innocence or the ultimate probability of acquittal upon trial in the demanding state. If these remarks had been incorporated into the judgment itself, a wholly different factual situation would be presented upon the appeal, but the judge expressly declared in the judgment as signed that he found as a fact 'that he (prisoner) is not a fugitive from justice from the state of South Carolina, and was not present at the time of the commission of the alleged crime at Greenville, South Carolina'. The judgment as written and signed speaks the mind of the judge and his conclusion upon the matters in issue. Therefore the judgment as rendered must stand."

In re Bailey, 166 S. E. 166-167.

Thus it is clear that the court has held and decided in this case:

1. That the *habeas corpus* statute of North Carolina empowers a Superior Court judge to discharge an accused felon in an extradition proceeding arbitrarily and without limitation; whereas, that court should have decided that in such a case the Superior Court

judge was bound and limited by the extradition clause in the Federal Constitution and the decisions of the United States Supreme Court construing such clause.

2. That under the North Carolina statute in an extradition case the action of the Superior Court judge in discharging an accused felon under a writ of *habeas corpus* was not appealable or reviewable even by the State Supreme Court for either the demanding State or the petitioner; whereas, that court should have decided that this case was reviewable by it to ascertain whether or not the proceedings in and decision of the Superior Court were in conformity with the extradition clause in the Federal Constitution and the decisions of the Supreme Court of the United States construing such clause.

3. That the decision of the Superior Court judge in discharging the accused is under the North Carolina statute final and conclusive; whereas, the Supreme Court of North Carolina should have decided that the *habeas corpus* statute of North Carolina in so far as it prevents review of law or facts in an extradition case would be in conflict with the extradition clause in the Federal Constitution as well as the decisions of the United States Supreme Court construing such clause, and hence void.

We contend that in this case the North Carolina Supreme Court should have reversed the judgment of the Superior Court, holding (a) that such judgment was not final and conclusive in an extradition case but reviewable in order to ascertain whether or not such

judgment was in conformity with the extradition clause of the Federal Constitution and the decisions of this Court construing such clause and the enabling Act of Congress relative thereto, (b) that such *habeas corpus* act in so far as it attempted to vest final and non-reviewable power in the Superior Court judge to discharge arbitrarily and without limitation an accused felon in an extradition proceeding under writ of *habeas corpus* is in conflict with the extradition clause contained in the Federal Constitution and the decisions of this Court construing same, and hence void, and that (c) the judgment of the Superior Court should be reversed because that court attempted to, and did, pass upon questions of *alibi*, identity, guilt or innocence, and other matters of defense, and discharged the accused under writ of *habeas corpus* in an extradition proceeding when the evidence of identity was not only and at least *contradictory* but *conclusive* against him, all of which was in conflict with the extradition clause in the Federal Constitution and the enabling Act of Congress as construed and applied in the decisions of this Court.

There are a multitude of decisions respecting various phases of the law of extradition as well as that of *habeas corpus*, but we have contented ourselves with citing the several, as we think, leading cases and authorities controlling the precise questions presented for review.

We ask a writ of certiorari to the Supreme Court of North Carolina bringing up this case for review to the end that the judgment therein may be reversed

for error and the case remanded with proper instructions.

Respectfully submitted,

THE STATE OF SOUTH,
CAROLINA,
Petitioner,
By JOHN M. DANIEL,
Attorney General;
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